



General Assembly

February Session, 2010

***Raised Bill No. 12***

LCO No. 38

\* \_\_\_\_SB00012INS\_\_021710\_\_ \*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

***AN ACT CLARIFYING POSTCLAIMS UNDERWRITING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-477b of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) As used in this section:

4 (1) "Cancellation" or "cancel" means the unilateral termination of an  
5 insurance policy, contract, evidence of coverage or certificate.

6 (2) "Limitation" or "limit" means the imposition of a restriction of  
7 coverage in an insurance policy, contract, evidence of coverage or  
8 certificate for an existing or preexisting medical condition.

9 (3) "Preexisting conditions provision" has the same meaning as  
10 provided in section 38a-476.

11 (4) "Rescission" or "rescind" means the termination of an insurance  
12 policy, contract, evidence of coverage or certificate by the insurer or  
13 health care center to the date of inception on the basis of (A) such  
14 insurer's or health care center's discovery of a preexisting condition

15 pursuant to an investigation conducted in accordance with subsection  
 16 (e) of this section, or (B) a material misstatement, omission or material  
 17 misrepresentation of fact on an insurance application by the insured  
 18 that the insurer or health care center relied upon to its detriment.

19 [(a)] (b) (1) Unless approval is granted pursuant to subsection [(b)]  
 20 (d) of this section, no insurer or health care center [may] shall rescind,  
 21 cancel or limit any policy of insurance, contract, evidence of coverage  
 22 or certificate [that provides] providing coverage of the type specified  
 23 in subdivisions (1), (2), (4), [(6),] (10), (11) and (12) of section 38a-469,  
 24 and having a duration of one year or more, on the basis of written  
 25 information submitted on [,] or with or omitted from an insurance  
 26 application by the insured if the insurer or health care center failed to  
 27 complete medical underwriting and resolve all reasonable medical  
 28 questions related to the written information submitted on [,] or with or  
 29 omitted from the insurance application before issuing the policy,  
 30 contract, evidence of coverage or certificate.

31 (2) Unless approval is granted pursuant to subsection (d) of this  
 32 section, no insurer or health care center shall rescind, cancel or limit  
 33 any policy of insurance, contract, evidence of coverage or certificate  
 34 providing coverage of the type specified in subdivisions (1), (2), (4),  
 35 (10), (11) and (12) of section 38a-469, and having a duration of less than  
 36 one year, including short-term health insurance issued on a  
 37 nonrenewable basis with a duration of six months or less, on the basis  
 38 of written information submitted on or with or omitted from an  
 39 insurance application by the insured.

40 (c) No insurer or health care center [may] shall rescind, cancel or  
 41 limit any such policy, contract, evidence of coverage or certificate more  
 42 than two years after the effective date of the policy, contract, evidence  
 43 of coverage or certificate.

44 [(b)] (d) An insurer or health care center shall apply for approval of  
 45 such rescission, cancellation or limitation by submitting such written  
 46 information to the Insurance Commissioner on an application in such

47 form as the commissioner prescribes. Such insurer or health care center  
 48 shall provide a copy of the application for such approval to the insured  
 49 or the insured's representative. Not later than seven business days  
 50 after receipt of the application for such approval, the insured or the  
 51 insured's representative shall have an opportunity to review such  
 52 application and respond and submit relevant information to the  
 53 commissioner with respect to such application. Not later than fifteen  
 54 business days after the submission of information by the insured or the  
 55 insured's representative, the commissioner shall issue a written  
 56 decision on such application. The commissioner may approve such  
 57 rescission, cancellation or limitation if the commissioner finds that (1)  
 58 the written information submitted on or with the insurance application  
 59 was false at the time such application was made and the insured or  
 60 such insured's representative knew or should have known of the  
 61 falsity therein, and such submission materially affects the risk or the  
 62 hazard assumed by the insurer or health care center, or (2) the  
 63 information omitted from the insurance application was knowingly  
 64 omitted by the insured or such insured's representative, or the insured  
 65 or such insured's representative should have known of such omission,  
 66 and such omission materially affects the risk or the hazard assumed by  
 67 the insurer or health care center. Such decision shall be mailed to the  
 68 insured, the insured's representative, if any, and the insurer or health  
 69 care center.

70 (e) When investigating a suspected preexisting condition that was  
 71 not disclosed by an insured, an insurer or health care center shall limit  
 72 its investigation based on a submitted claim to (1) issues having a  
 73 direct relationship to the alleged preexisting condition that is the  
 74 subject of the claim, and (2) the period preceding the effective date of  
 75 the policy, contract, evidence of coverage or certificate permitted to be  
 76 limited or excluded under the preexisting conditions provision of such  
 77 policy, contract, evidence of coverage or certificate.

78 ~~[(c)]~~ (f) Notwithstanding the provisions of chapter 54, any insurer or  
 79 insured aggrieved by any decision by the commissioner under  
 80 subsection ~~[(b)]~~ (d) of this section may, ~~[within]~~ not later than thirty

81 days after notice of the commissioner's decision is mailed to such  
 82 insurer and insured, take an appeal therefrom to the superior court for  
 83 the judicial district of Hartford, which shall be accompanied by a  
 84 citation to the commissioner to appear before said court. Such citation  
 85 shall be signed by the same authority, and such appeal shall be  
 86 returnable at the same time and served and returned in the same  
 87 manner, as is required in case of a summons in a civil action. Said court  
 88 may grant such relief as may be equitable.

89 (g) An insurer or health care center that accepts a telephonic  
 90 application for individual health insurance coverage shall: (1) Provide  
 91 to the applicant, prior to the completion of the application process,  
 92 disclosure of (A) the maximum duration of such policy or contract, (B)  
 93 any preexisting conditions provisions and an accurate description of  
 94 each such provision, (C) the relevant exclusionary periods pertaining  
 95 to such preexisting conditions, and (D) the amount of the monthly  
 96 premium; (2) retain for two years after the effective date of the policy  
 97 or contract, in a readily retrievable format, a recording of the  
 98 applicant's complete telephonic application process; (3) mail the  
 99 applicant a letter that contains a copy of such applicant's completed  
 100 application, which may include confirmation of such applicant's  
 101 agreement to the maximum duration of such policy or contract, the  
 102 preexisting conditions provisions specified in such policy or contract  
 103 and the relevant exclusionary periods pertaining to such preexisting  
 104 conditions and the monthly premium specified for such policy or  
 105 contract. Such letter shall include a notice that such applicant shall be  
 106 bound by such agreement unless such applicant rescinds such  
 107 agreement in writing not later than ten days after receipt of such letter;  
 108 and (4) retain a copy of such letter and such rescission, if applicable,  
 109 for two years after the effective date of the policy or contract. The  
 110 requirements of this subsection shall not apply to telephonic  
 111 applications for Medicare supplement policies.

112 (h) Any insurance producer or agent who completes or assists in the  
 113 completion of an application for insurance and an insured who signs  
 114 such application or does not object to information submitted on or

115 with or omitted from such application shall be jointly and severally  
116 liable for any claims resulting from any information knowingly  
117 omitted or misrepresented by such producer or agent in such  
118 application.

119 [(d)] (i) The Insurance Commissioner may adopt regulations, in  
120 accordance with chapter 54, to implement the provisions of this  
121 section.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	October 1, 2010	38a-477b
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***INS***      ***Joint Favorable***